Court No.3
Reserved

Civil Writ Petition No. 1517 (S/B) 2002

R.D.Saxena …….. Petitioner

Versus

Bharat Heavy Electricals Limited and others …..Respondents.

Hon'ble Irshad Hussain,J.
Hon'ble M.M. Ghildiyal, J.

(Delivered by Hon'ble Irshad Hussain,J.)

The petitioner filed this writ petition with a prayer to issue a writ, order or direction in the nature of mandamus directing the respondents to promote him with effect from 25th June 2000 and to give him consequential benefits thereof.

The petitioner was an employee of respondent No.2 company. He retired from his service on 24th July 2000. At that time he was working as a Senior Manager (TBM). He was lastly promoted in the year 1995 from the post of Manager to the post of Senior Manager i.e. Grade- E-4 to Grade-E-5. These facts are not in dispute.

The petitioner alleged that his next promotion from the post of Senior Manager to Deputy General Manager i.e. from Grade-E-5 to E-6 was due with effect from June 1998 but he was not promoted; that he was also not promoted in the year 1999 while his juniors were promoted and no reason was communicated to him for the same; that his work and conduct has always been to the entire satisfaction of his superiors and he was never communicated any adverse remark when annual confidential reports were incorporated in the service record; that in the month of May/June 2000 departmental promotion committee was constituted and he appeared before it and one of the member of the committee was Sri R.C. Jain, the Chief Executive Director(Personal); that Sri Jain told him that he could not be promoted as he had only one months time left for his superannuation and that the respondents have thus made the discrimination by not promoting him on the said ground whereas Sri D.K. Rathore of the Commercial department was promoted on 25th June 2000 while this incumbent was due to retire on 24th August 2000 and another person Sri D.K. Agarwal was

promoted with effect from 25th March 2000 although he was due to retire on 24th June 2000.

The petitioner claimed to have made oral requests besides making written representations to the respondents to promote him but to no avail. Annexure-1 is the copy of the representation dated 29-6-2000 and whereas the Annexure-2 is the copy of the notice dated 23.4.2002 sent to the respondents seeking their indulgence in the matter.

On behalf of the respondents counter affidavit of Manager Law Sri Brinda Ban Behari was filed and wherein it was averred that under the relevant rule of promotion policy, Annexure-1, the petitioner was also considered for promotion after completion of the eligibility period, from Senior Manager to Deputy General Manager by the high power departmental promotion committee, but the committee did not find the petitioner suitable for promotion; that the case of the petitioner stand on different footing because other incumbents Sarva Sri Rathore and Agarwal were senior to the petitioner and there was no discrimination in the matter of promotion of the petitioner and that under the circumstances no violation of principle of natural justice and service jurisprudence has been done by the respondents. In the rejoinder affidavit the petitioner reiterated contentions raised in the petition and at the same time disputed the locus of the Manager Law to file counter affidavit on behalf of the respondents as he was not the member of the departmental promotion committee.

Heard Sri Pankaj Miglani learned counsel for the petitioner and Sri B.P.Nautiyal learned counsel for the respondents.

The important aspect of the matter in this petition is that the petitioner was retired from his service on 24th July 2000 and the present petition was filed on 29th October 2002 i.e., more than after two years from the date when he attained superannuation. The petitioner also pleaded that he was due to be promoted from Grade E-5 to E-6 with effect from June 1998 but was not promoted. It is also his case that he was not promoted in the year 1999 while his juniors were promoted. It is evident that he made no representation in these years i.e. 1998 and 1999 but made first representation, Annexure-1 on 29-6-2000 and sent legal notice much after his retirement on 23.4.2002, Annexure-2. The petitioner was aggrieved by the action of the respondents right form the year 1998 but has not

approached the court till as late as more that two years after his superannuation. It is well settled that one can not sleep over the matter and come to the court with inordinate delay. The petitioner has had occasions as stated above to raise his grievance before the Court but he continued to sleep and did not approach the Court for redressal ofl his grievance. There can be no doubt that there had been latches on the part of the petitioner and no explanation whatsoever has been put forward by him and therefore powers under Article 226 of the Constitution cannot be exercised in regard to the stale claim of the petitioner.

The petition therefore may be dismissed on account of latches alone.

The learned counsel for the petitioner submitted that the submissions of the petitioner have not been refuted effectively in view of the fact that the Manager Law who filed counter affidavit has no role to play in the high power departmental promotion committee and therefore he could not have averred that the committee did not find the petitioner suitable for promotion from Senior Manager to Deputy General Manager. The contention of the learned counsel was that in the fact of this fact the submissions of the petitioner deserve acceptance and it need to be held that the respondents have discriminated with the petitioner in the matter of his promotion on the ground of his retirement in near future. In paragraph-5 of the counter affidavit the dependent made the definite assertion and averment that high power committee had considered the case of the petitioner for promotion to senior post but the petitioner was not found suitable for promotion. The deponent Sri Brinda Ban Behari is working as the Manager(Personal and Law) and we find no reason to doubt his credentials that in his capacity as the Manager the averment was made in the affidavit on the basis of the relevant record of the departmental promotion committee. The petitioner himself has not disputed the constitution of departmental promotion committee and also the fact that his case for promotion was considered in the month of May/June 2000. Considering these facts there appear to be no merit in the contention raised by the petitioner and it is clearly established that the petitioner was considered for promotion a right which he had by virtue of the provisions of Articles 14 and 16 of the Constitution and since he had not been found suitable for promotion it is not a case of violation of these provisions of the Constitution.

In view of the above we do not find any merit in this petition and the same is hereby dismissed. No order as to costs.

(Irshad Hussain, J.) **(M.M. Ghildiyal, J.)**

Dated: 5-9-2003
ISB